



Law Offices of Florek & Counsel, L.L.C.

2900 Westchester Ave., Suite 405

Purchase, New York 10577

T: (914) 779-1500

F: (914) 219-0948

2 Westchester Park Dr., Suite 205

White Plains, New York 10604

T: (914) 219-4128

F: (914) 219-0948

Louis Mc Carthy

July 20, 2018

VIA ECF & EMAIL

Honorable Cathy Seibel, U.S.D.J.
United States District Court for the
Southern District of New York
300 Quarropas Street,
White Plains, New York 10601

RE: PBR Sales, LLC, v. E.T. Oil, Inc., Edwin Tanglao, Et. Al., 7:17-05076-CS

Dear Judge Seibel:

Florek and Counsel is "Of Counsel" to Lettera and Mosiello LLP, attorneys for the plaintiff, in the above-referenced action. Pursuant to Rule 2A of Your Honor's Individual practices, on March 29, 2018, PBR Sales LLC ("PBR" or "Plaintiff") e-filed a letter requesting a pre-motion conference, in anticipation of filing a motion for leave to amend a complaint under Rule 15, and for an Order authorizing the Secretary of State of California to effect service of process of the amended complaint, on E.T. Oil, Inc. ("E.T. Oil")

On March 29, 2018, because no already named and served defendant appeared, a pre-motion conference was determined as unnecessary, and PBR was granted permission to make a motion to amend its complaint. On April 26, 2018, PBR filed its motion to amend its complaint, with a memorandum of law and a proposed amended complaint. Defendants filed no opposition to PBR motion, and on May 14, 2018 this Court issued an Order, granting PBR's motion for leave to amend its complaint.

In a letter dated April 30, 2018, and received by this office on May 23, 2018, it was learned that Joseph Hoats, a named defendant, in the above-referenced action, filed for Chapter 13 bankruptcy protection, in February 2018, (case no.: 2:18-bk-11053-WB), and gave notice that he had filed a Notice of Claim Objection to PBR's \$2,100,000.00 claim in its original Complaint against E.T. Oil.



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PBR did not, and has yet to serve the Amended Complaint on any named defendant, because Joseph Hoats a named defendant in the action was under the protection of an automatic bankruptcy stay, pursuant to 11 U.S.C. Section 362, which prevented any action against the debtor.

PBR retained a California counsel to oppose to the Claim Objection, and on May 30, 2018, Judge Julia W. Brand, of the U.S. bankruptcy Court, Central District of California, overruled the claim objection as immature, because PBR's S.D.N.Y. action remained pending against the debtor Joseph M. Hoats.

PBR filed a motion for relief from the stay, in bankruptcy court, with respect to Joseph Hoats' Claim Objection against PBR. On July 17, 2018, the Bankruptcy Court denied PBR's motion for relief from the stay.

Pursuant to Rule 15(a)(2), PBR seeks to remove Joseph Hoats as a named defendant in the above-referenced action and to serve the Amended Complaint against the remaining named defendants.

Plaintiff PBR Sales, LLC, has made numerous attempts to serve process on E.T. Oil, Inc., without success, at the corporation's currently listed address, found in the Statement of Information form, which E.T. Oil, Inc., provided to the State of California Secretary of State. Plaintiff PBR Sales, LLC's process server was diligent in attempting to serve process on E.T. Oil, Inc., and provided an affidavit of non-service.

Under California Corporations Code 1702(a) and (d), if a designated agent, for the purpose of service of process, cannot be found at the address designated for personally delivering the process, and it is shown by affidavit to the satisfaction of the court that process against a domestic corporation cannot be served with reasonable diligence upon the designated agent by hand, a court of another state, or of any federal court, if the suit has been filed in that court, may make an order authorizing the Secretary of State's office to deliver, by hand, a copy of the process for each defendant to be served, together with a copy of the order authorizing such service.

Plaintiff seeks a conference at the Court's earliest convenience to discuss the removal of Joseph Hoats as a named defendant in the action, and an order authorizing the State of California Secretary of State to effect substituted service upon E.T. Oil, Inc.



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Respectfully submitted,

Lettera & Mosiello, LLP

Louis Mc Carthy (LM7007)

Stephen A. Florek

2 Westchester Park Drive, Suite 205

White Plains, New York 10604

(914) 481-8900

louis@florekcounsel.com

stephen@florekcounsel.com